IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Crl.L.P..No. 507 of 2007()

AGAINST THE JUDGMENT DATED 26/02/2007 IN CC NOS.1485/2004 & 1486/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOCHI

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PETITIONER/ COMPLAINANT:

K.C.GEORGE, C/O.R.R.TRADING CO.,
BAZAAR ROAD, KOCHI-2.

BY ADV. SRI. C.SANKUNNY

RESPONDENTS: ACCUSED & STATE:

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1. BONIFUS KARNETH, KARNETH HOUSE,
1/967, KOTTAVALAPPU, NEAR BASILICA CHURCH,
FORT KOCHI.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 507 OF 2007

Dated this the 22nd day of August, 2007

O R D E R

This petition for special leave to appeal is filed against the common judgment in C.C. Nos. 1485 and 1486 of 2004 on the file of the Judicial First Class Magistrate's Court - II, Kochi.

2. The case of the complainant was that the accused borrowed from him an amount of Rs.50,500/- and issued Exts.P1 and P2 cheques for Rs.30,000/- and Rs.20,500/- respectively towards discharge of the above liability which when presented to the bank for encashment were dishonoured for want of sufficient funds in the account of the accused. After complying with the statutory provisions, the complaint was filed against the accused alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"). To prove the case against the accused, the complainant himself was examined as PW.1 and Exts.P1 to P10 were produced. No oral or documentary evidence was adduced on the side of the defence. The

accused when questioned under Section 313 Cr.P.C. stated that the cheques in question were not issued in discharge of any debt as alleged in the complaint, but the same were given as security on the basis of an undertaking that the amount covered by the cheques will be paid otherwise than through the bank. After considering the entire evidence, the trial court found the accused not guilty and acquitted him of the charges levelled against him.

3. As per the provisions of the Act, to constitute an offence under Section 138 of the Act, the holder of the cheque should prove that the cheque in question was issued in discharge of a legally enforceable debt. The petitioner - complainant had admitted before the court below that the cheques were given by the accused - first respondent as security and not for presentation before the bank. He also admitted that the cheques in question were issued on the basis of an undertaking that the same shall be not presented before the bank. Cheque is defined in Section 6 of the Act as follows:

> "A `cheque' is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand."

If there was an undertaking by the person who issued the cheques to the effect that the amount covered by the cheques would be paid otherwise than by presentation before the bank, then the cheques in question cannot be considered as negotiable instruments in which case an offence under Section 138 of the Act is not attracted. In the above circumstances, this Court is of the view that the finding entered by the trial court is justifiable and it requires no interference. It is seen that two Calendar Cases were disposed of by a common judgment and only one Special Leave Petition is filed. Hence, this petition is not legally sustainable.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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